

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GERALD CASH, et al.	:	CASE NO. 1:01CV753
Plaintiffs	:	(Judge Beckwith)
v.	:	CITY OF CINCINNATI'S MOTION TO DISMISS FOR LACK OF JURISDICTION PLAINTIFFS' CLAIM CHALLENGING THE CITY'S PRACTICE OF PROVIDING NOTICE BY NEWSPAPER PUBLICATION AND MEMORANDUM IN SUPPORT
HAMILTON COUNTY DEPARTMENT OF ADULT PROBATION, et al.	:	
Defendants.	:	

The City of Cincinnati moves to dismiss for lack of jurisdiction the plaintiffs' claim challenging the City's practice of providing notice by publication of the sale of "lost and found" objects. The plaintiffs do not have standing to challenge the City's practice of providing notice of the sale of "lost and found" objects by publication in a newspaper. The plaintiffs' allegations, and the record, establish that if any objects owned by any plaintiff were disposed by an employee of the City of Cincinnati, those objects were disposed at the site of a cleanup. The plaintiffs, therefore, did not suffer an injury in fact caused by the City's practice of publishing notice of the sale of "lost and found" objects.

Lack of jurisdiction must be considered by the Court at any time. *Zurich Ins. Co. v. Logitrans, Inc.*, 297 F.3d 528, 531 (6th Cir. 2002). The City's motion for summary judgment filed on July 21, 2006, established the uncontroverted fact that plaintiff Wahoff observed individuals at the site "throwing the garbage straight in the truck . . . bringing our belongings and going straight in the garbage truck." Wahoff Deposition, pp. 9-10, 12. Plaintiff Garcia testified that objects belonging to him were taken from an encampment on September 28, 2001 (Garcia Deposition, pp. 8-9), but

the uncontroverted testimony is that Cincinnati Police Officer Branigan was the only officer involved in cleanups and that occurred at a different site on October 17-19, 2001 (Branigan Deposition, pp. 23, 25). According to the affidavit of counsel for the plaintiffs, and as the plaintiffs argued to the United States Court of Appeals for the Sixth Circuit, none of the plaintiffs' property appeared in the inventory from the Cincinnati Police Department Property Room. R. 26, Newman Affidavit; 6th Circuit Brief of Plaintiffs-Appellants, p. 6. None of the plaintiffs, therefore, suffered an injury in fact proximately caused by the City's practice of providing notice by publication in a newspaper of the sale of "lost and found" objects.

Furthermore, the plaintiffs who were able to be deposed in this proceeding testified that they read newspapers and are aware of notices published in newspapers. Wahoff Deposition, pp. 16, 22; Garcia Deposition, p. 10. The plaintiffs do not have standing to assert the alleged rights of unidentified hypothetical third persons who cannot or do not read and who are not even parties to this proceeding.

Since the plaintiffs do not have standing to challenge the City's practice of providing notice by publication, the Court lacks jurisdiction over that claim.

Respectfully submitted,

JULIA L. MCNEIL (0043535)
City Solicitor

s/ Richard Ganulin
RICHARD GANULIN (0025642C)
Assistant City Solicitor
Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202
(513) 352-3329
(513) 352-1515 FAX
richard.ganulin@cincinnati-oh.gov

Trial Counsel for Defendant City of Cincinnati

CERTIFICATE OF SERVICE

I hereby certify on September 7, 2006 a true and accurate copy of the foregoing City of Cincinnati's Motion to Dismiss for Lack of Jurisdiction Plaintiffs' Claim Challenging the City's Practice of Providing Notice by Newspaper Publication and Memorandum In Support was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties by certified mailed who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Richard Ganulin
RICHARD GANULIN (0025642C)
Assistant City Solicitor

(Police) Cash MTD 0906-RG/(chs)